

JS-6

**IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

KIYA NEWMAN,

Plaintiff,

v.

KILOLO KIJAKAZI, Acting  
Commissioner of Social Security,

Defendant.

Case No. CV 22-5087 JAK (MRW)

**ORDER DISMISSING ACTION  
WITHOUT PREJUDICE**

**FRCP 4, 41**

The Court dismisses this civil action without prejudice for failure to serve the complaint and for failure to respond to court orders.

\* \* \*

1. This is an appeal from the denial of Social Security disability benefits. In July 2022, Plaintiff Newman (a self-represented litigant) filed a civil complaint seeking district court review of the agency decision. (Docket # 1.) Plaintiff also sought permission to proceed in forma pauperis. (Docket # 3.) The assigned district judge granted the IFP request. (Docket # 5.)

1           2.     Pursuant to General Order 05-07, the matter was referred to  
2 Magistrate Judge Wilner for preliminary proceedings. (Docket # 4.)  
3 Judge Wilner issued an order informing Plaintiff of her obligation to serve  
4 the complaint on the government within the time specified by Federal Rule  
5 of Civil Procedure 4. (Docket # 6.) Judge Wilner directed Plaintiff to  
6 promptly file proof of service of the complaint or affirmatively request  
7 assistance with service from the Marshals Service. (Id. at 1.)

8           3.     Plaintiff failed to file a proof of service on the government. She  
9 also failed to request assistance from the Marshals Service. As a result, in  
10 October 2022, Judge Wilner issued an order to show cause why the action  
11 should not be dismissed. (Docket # 8.) The OSC noted that the  
12 government had neither been served with the complaint nor appeared in  
13 the action in the period since Plaintiff filed the case. Judge Wilner also  
14 noted that Rule 4(m) required dismissal of the action unless Plaintiff could  
15 demonstrate good cause to extend the time for service. The order gave  
16 Plaintiff a month to respond to the Court's inquiry and to demonstrate good  
17 cause. (Id.)

18           4.     Plaintiff failed to respond to the October 2022 OSC. To date,  
19 Plaintiff has not filed anything in this Court since commencing the action  
20 last summer (other than a second, superfluous IFP application (Docket # 9,  
21 10)).

22                               \* \* \*

23           5.     Federal Rule of Civil Procedure 4(m) states that "If a defendant  
24 is not served within 90 days after the complaint is filed, the court – on  
25 motion or on its own after notice to the plaintiff – must dismiss the action  
26 without prejudice against that defendant." If a plaintiff demonstrates  
27  
28

1 “good cause for the failure, the court must extend the time for service for an  
2 appropriate period.”

3 6. Rule 41(b) provides that if a plaintiff “fails to prosecute or to  
4 comply with these rules or a court order, a defendant may move to dismiss  
5 the action or any claim against it.” Dismissal also may be ordered by the  
6 Court sua sponte. Link v. Wabash R.R., 370 U.S. 626, 629-30 (1962).  
7 Dismissal under this rule is an “adjudication on the merits” of a claim  
8 “unless the dismissal order states otherwise.” Fed. R. Civ. P. 41(b).

9 7. Dismissal of a civil action under Rule 41 may be appropriate to  
10 advance the public’s interest in the expeditious resolution of litigation, the  
11 court’s need to manage its docket, and to avoid the risk of prejudice to  
12 defendants. Omstead v. Dell, Inc., 594 F. 3d 1081, 1084 (9th Cir. 2010).  
13 Additionally, a court should consider the public policy favoring disposition  
14 of cases on their merits and the availability of less drastic alternatives in  
15 its evaluation. Carey v. King, 856 F.2d 1439, 1440 (9th Cir. 1988).

16 \* \* \*

17 8. The Court concludes that dismissal of this action is  
18 appropriate. Plaintiff filed this Social Security appeal in July 2022. Since  
19 then, she has failed to take basic steps to serve her complaint on the  
20 government. She also failed to respond to two orders from the magistrate  
21 judge. Those orders informed Plaintiff of the potential consequence of  
22 failing to serve the complaint under Rule 4(m).

23 9. Plaintiff’s failure to participate in the litigation in any  
24 meaningful way demonstrates that she has no interest in advancing the  
25 action here. By contrast, the Court, the defense, and the public have a  
26 strong interest in terminating this action. This is particularly true given  
27 that Plaintiff effectively chose to abandon her case by failing to respond to  
28

1 the court's orders. Furthermore, because Plaintiff is a pro se litigant who  
 2 did not serve the complaint or comply with the magistrate judge's previous  
 3 orders, no sanction short of dismissal will be effective in moving this case  
 4 forward.<sup>1</sup> Carey, 856 F.2d at 1440.

5 10. The Court concludes that dismissal is appropriate under  
 6 Rules 4(m) and 41(b). Omstead, 594 F. 3d at 1084. Because of the nature  
 7 of Plaintiff's claim and her unrepresented status, the Court exercises its  
 8 discretion to dismiss the action without prejudice.

9 Therefore, the present action is hereby DISMISSED without  
 10 prejudice.

11 IT IS SO ORDERED.

12  
 13  
 14 Dated: December 1, 2022



15 JOHN A. KRONSTADT  
 16 U.S. DISTRICT JUDGE

17 Presented by:



18  
 19  
 20 HON. MICHAEL R. WILNER  
 21 UNITED STATES MAGISTRATE JUDGE

22  
 23  
 24  
 25 <sup>1</sup> Magistrate Judge Wilner notes that, even if Plaintiff had properly  
 26 served the complaint on the government, this federal action appears to untimely  
 27 on its face. According to the complaint, the Social Security Appeals Council  
 28 denied Plaintiff's claim in February 2022. Federal law requires that a district  
 court action for review of an adverse ruling be "commenced within sixty days  
 after the mailing to him of notice of such decision." 42 U.S.C. § 405(g) (emphasis  
 added). Plaintiff did not file this federal action until July 2022 – or over  
 five months after the denial. The action likely is untimely as a matter of law.